

TITLE VI CIVIL RIGHTS NEWS @FCS

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Dear Colleague,

In recognition of Earth Day and Arbor Day, let us take this opportunity to consider how we can use Title VI of the Civil Rights Act of 1964 to address environmental justice issues.

In 1994, President Clinton signed [Executive Order No. 12898](#), *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*. A [Presidential Memorandum](#) accompanied the Executive Order illustrating, in part, the connection between environmental justice and Title VI:

In accordance with Title VI of the Civil Rights Act of 1964, each Federal agency shall ensure that all programs or activities receiving Federal financial assistance that affect human health or the environment do not directly, or through contractual or other arrangements, use criteria, methods, or practices that discriminate on the basis of race, color, or national origin.

With this in mind, we dedicate this Spring 2015 issue of the *Title VI Civil Rights News @ FCS* to the efforts of federal agencies to advance environmental justice through Title VI enforcement and compliance activities. As the Assistant Attorney General for Civil Rights once said: “Title VI’s breadth of coverage is extensive and it can address a huge array of injustices: from environmental racism...to disparities in basic health care and basic services, to inequities in transportation, housing, and education.” This speaks to the extensiveness of Title VI and guides our Title VI environmental justice work.

As with previous issues, we have highlighted noteworthy federal Title VI agreements, settlements, findings, and policy developments, as well as frequently asked questions. We invite you to send your Title VI questions to FCS.CRT@usdoj.gov. We may include your question and our answer in a future issue or respond to your inquiry directly.

Thank you for your interest in Title VI and environmental justice. Former Attorney General Eric Holder declared that “[o]ur environmental laws and protections must extend to all people, regardless of race, ethnicity, or socioeconomic status.” Let us continue to keep civil rights in mind as we fight for the health of our communities and the environment.

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The questions and answers in this newsletter are intended only to provide guidance to federal agencies and other interested entities and are not intended to, do not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States.



TITLE VI: A POWERFUL TOOL

TITLE VI: A POWERFUL TOOL TO ADDRESS DISCRIMINATION AND ADVANCE ENVIRONMENTAL JUSTICE

“Title VI’s breadth of coverage is extensive and it can address a huge array of injustices: from environmental racism...to disparities in basic health care and basic services to inequities in transportation, housing, and education.”

August 19, 2010 Memorandum from the Assistant Attorney General for Civil Rights to the Federal Funding Agency Civil Rights Directors.

Environmental justice and Title VI are both rooted in the same basic principle that no person should bear an unfair share of harm on account of their race, color or national origin. At its core, Title VI requires recipients of federal funding to ensure that their programs operate in a nondiscriminatory manner. Indeed, the central tenet of environmental justice – that programs benefitting a community as a whole not disproportionately allocate their adverse environmental and health burdens – flows directly from this underlying principle of Title VI.

Where federally funded programs – like transportation agencies, state agencies responsible for environmental permitting, hospitals and health clinics, and countless others – affect human health or the environment, Title VI enforcement may resolve problems that other laws cannot.

Discriminatory Effects under Title VI. Most federal agencies have regulations implementing Title VI, which prohibit funding recipients from “utilizing criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin....” *See, e.g.*, 28 C.F.R. 42.104(b)(2) (DOJ regulations). This prohibition on unjustified discriminatory effects was first established nearly 50 years ago, just after passage of the Civil Rights Act in 1964. Individuals must turn to the administrative complaint process to secure the protections afforded by these regulations. Federal funding agencies play a vital enforcement role because individuals must turn to the administrative complaint process to secure the protections offered by these regulations. The Attorney General has directed federal agencies to fully utilize these provisions and the Assistant Attorney General for Civil Rights has emphasized the need for their vigorous enforcement. Federal agencies must recognize their crucial role in addressing discriminatory effects and work to further environmental justice through Title VI enforcement.



THE DEPARTMENT OF JUSTICE AND ENVIRONMENTAL JUSTICE

Intersection of Title VI and Environmental Justice. Many types of Title VI cases involve environmental justice issues and could be resolved through the administrative complaint process. Some factors to consider in determining whether specific situations raise environmental justice concerns include whether individuals, certain neighborhoods, or tribes:

- Suffer disproportionately adverse health or environmental effects from pollution or other environmental hazards;
- Suffer disproportionate risks or exposure to environmental hazards, or suffer disproportionately from the effects of past under-enforcement of state or federal health or environmental laws;
- Have been denied an equal opportunity for meaningful involvement, as provided by law, in governmental decision making relating to the distribution of environmental benefits or burdens. (e.g., permit processing and compliance activities)

Where a *federally funded* program may be responsible for these harms, a Title VI investigation may help determine whether the harms have a discriminatory effect on persons identifiable by race, color, or national origin.

FEDERAL COORDINATION OF TITLE VI AND ENVIRONMENTAL JUSTICE

The Department of Justice is charged by Executive Order 12250 with ensuring the government-wide consistent and effective enforcement of Title VI, which includes nondiscrimination in programs and activities that affect the environment and human health:

- The Title VI Committee of the Federal Interagency Working Group on Environmental Justice (EJ IWG), which is chaired by DOJ's Civil Rights Division, acts as a resource to help agencies connect their civil rights enforcement responsibilities with their efforts to achieve environmental justice. In 2014, the EJ IWG launched its Title VI webpage with the goal of ensuring consistent enforcement of Title VI across the federal family and encouraging the use of this critical enforcement tool to address environmental justice issues at [go.usa.gov/3BYf5](https://www.go.usa.gov/3BYf5).
- The Civil Rights Division's Federal Coordination and Compliance Section runs a robust program of technical assistance and legal counsel to civil rights offices across the government. A significant part of the Division's environmental justice work is providing targeted technical assistance to federal agencies that receive complaints alleging Title VI violations in programs that affect the environment and human health. The Division helps many agencies in addressing matters involving intentional discrimination as well as discriminatory effects in matters involving environmental permitting and enforcement, transit equity, municipal services, emergency management, access to federal benefits, and more. Read more about our Title VI Coordination Initiative at [go.usa.gov/3BYfV](https://www.go.usa.gov/3BYfV).



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AGENCY ENFORCEMENT EFFORTS

- The newly launched Title VI training program for federal civil rights staff includes a segment on environmental justice. This training component emphasizes the ability of agencies that fund activities that affect human health and the environment to use their Title VI compliance efforts to achieve the environmental justice goals of Executive Order 12898.
- The revised Title VI manual will be issued in 2015. The update will provide detailed guidance to agencies analyzing, among other issues, discriminatory treatment and discriminatory effects under Title VI. Over time, the manual will address the application of Title VI in a range of areas, including environmental justice, transportation equity, and school discipline.
- DOJ's public outreach on environmental justice issues has included moderating a panel on federal Title VI enforcement during the annual Environmental Justice Conference and Training Program held in Washington, D.C. as well as holding listening sessions to learn about various civil rights issues of concern from stakeholders.

HIGHLIGHTS OF AGENCY EFFORTS TO ADVANCE ENVIRONMENTAL JUSTICE THROUGH TITLE VI ENFORCEMENT

Approximately 30 federal agencies investigate Title VI administrative complaints alleging discrimination in federally funded programs affecting human health or the environment. Additionally, many of those agencies publish annual environmental justice progress reports. Below we highlight several agencies' Title VI enforcement activities involving environmental justice issues.

Department of Transportation. DOT has a well-established set of environmental justice (EJ) and Title VI policies, including the Federal Transit Administration's (FTA) two companion circulars that help recipients understand and comply with environmental justice principles through both Title VI compliance and the environmental justice executive order. Notably, the Title VI circular requires, among other things, that certain recipients conduct an equity analysis of the impact on minorities of certain actions and decisions. Both circulars and related materials are available at go.usa.gov/3kngJ and go.usa.gov/3kn4Q.

The Federal Highway Administration (FHWA) also directs recipients to address environmental justice issues in their federally funded activities. It is currently developing a number of resources, including the EJ Reference Guide, which is intended to be a resource for staff to ensure compliance with EJ requirements, and the EJ Booklet highlighting recent policy changes and initiatives. The Guide will aid staff and stakeholders in identifying and addressing disproportionately high and adverse effects of agency programs, policies and activities on minority populations and low-income populations. The Reference Guide clarifies existing requirements and is available to the public on the [FHWA EJ website](#),



AGENCY TITLE VI AGREEMENTS, SETTLEMENTS AND FINDINGS

[go.usa.gov/3knZz](https://www.go.usa.gov/3knZz), and can be accessed under “Recent Updates” or “References.” The FHWA has also formed an EJ Workgroup, which includes other DOT modes, and collaborates with the National Highway Institute. The workgroup is developing an EJ Analysis Course as part of the EJ Reference Guide. In order to register for the webinar, participants external to US DOT will first need to request an account at [go.usa.gov/3kn](https://www.go.usa.gov/3kn), then register at [go.usa.gov/3knWV](https://www.go.usa.gov/3knWV). FHWA’s civil rights office has conducted a national Title VI Program webinar that includes a component on EJ requirements for state transportation agencies and monitoring responsibilities of FHWA Division offices.

DOT components also address environmental justice issues through investigation and resolution of Title VI complaints. For example, in one case, FTA found two cities in south Florida non-compliant with Title VI requirements when the cities failed to assess the potential adverse disparate impacts stemming from relocation of a trolley maintenance facility to a historically Black neighborhood. As a direct result of FTA’s involvement in the matter, city officials agreed to keep the facility near its current location. Read more at [go.usa.gov/3B9NW](https://www.go.usa.gov/3B9NW). Similarly, in another Title VI investigation, FHWA found that an Ohio city’s denial of expanded bus service to a large medical center, as well as other essential services, caused disproportionate harm to African Americans. The case ultimately resulted in the construction of three new bus stops. Read more at [go.usa.gov/3B97T](https://www.go.usa.gov/3B97T).

Environmental Protection Agency. In accordance with Title VI, EPA’s office of Civil Rights (OCR) maintains a program to ensure that recipients of Federal financial assistance from EPA do not operate their programs or activities in a way that discriminates on the basis of race, color, or national origin, including on the basis of limited-English proficiency. Consistent with EPA’s ongoing efforts to strengthen its external civil rights compliance program, earlier this week OCR released a report that outlines its progress on specific deliverables related to Title VI compliance efforts, as a supplement to Plan EJ 2014. Read the full report for more information about EPA’s accomplishments regarding specific Title VI deliverables over the past four fiscal years, including: OCR’s renewed commitment to (1) strategic management of its Title VI complaint docket; (2) successful resolution of complaints; and (3) settlement of significant Title VI matters.

In addition, this week OCR released a policy paper entitled “Issue Paper on the Role of Complainants and Recipients in the Civil Rights Complaints and Resolution Process.” The purpose of this paper is to promote greater participation by complainants and recipients in the civil rights complaint and resolution process, including Title VI complaints, by clarifying existing practices and identifying opportunities for greater participation within that framework.

Several agencies’ civil rights offices, such as the Department of Health and Human Services and the Department of Homeland Security, have committed to review environmental justice issues and allegations that arise in programs and activities they fund. To learn more about other federal agencies’ environmental justice and Title VI efforts, visit the home page of the Federal Interagency Working Group on Environmental Justice ([go.usa.gov/3knj3](https://www.go.usa.gov/3knj3)) and its Title VI page ([go.usa.gov/3knjA](https://www.go.usa.gov/3knjA)).



AGENCY TITLE VI AGREEMENTS, SETTLEMENTS AND FINDINGS



Department of Education Addresses Race/National Origin Discrimination in Huntington Beach, CA, Schools: Resolved on January 16, 2015, this case involved allegations of peer harassment based on race/national origin and disability and whether the District failed to respond appropriately to notice of the harassment. OCR's investigation yielded troubling information about student name-calling and harassing activity and the District failing to investigate some incidents or take corrective action and failing to identify whether the bullying affected implementation of the student's free appropriate public education services.

Prior to the conclusion of OCR's investigation, the District entered into a voluntary agreement requiring it to develop and implement a plan to assess and monitor the climate at the school; provide investigative training to District and school administrators; to provide student instruction about harassment; and to communicate with parents the District's prohibition of harassment.

The agreement also obligates the District to assess the potential effects of bullying on the student's learning and to ensure the student has sufficient supports to address disability-based challenges in socializing with peers.

Resolution letter: go.usa.gov/3ZjVT

Resolution agreement: go.usa.gov/3ZjV9

Department of Education Completes Compliance Review, Examining Discriminatory Harassment Against Students in Yakima, WA: On February 3, 2015, OCR resolved a compliance review of the Yakima School District, Washington, with a comprehensive resolution agreement. OCR examined whether the District has taken appropriate action to address harassment of students on the bases of sex, race, color, national origin, and disability. After identifying relatively high rates of bullying in the District, OCR found that the District had violated Title VI and other federal civil rights laws by failing to provide nondiscrimination notices or procedures for prompt and equitable resolution of student or employee complaints, failing to provide what steps the District must take to address the harassment, and for failing to maintain sufficient records to allow OCR to determine whether a hostile environment exists for students based on sex, race, color, national origin and/or disability.

Under the agreement, the District agreed to take the following actions: promptly investigate all incidents of

harassment based on sex, race, color, national origin, and disability of which it has notice; take appropriate action to end the harassment, prevent its recurrence, and remedy its effects where appropriate; hire or assign an equity consultant to assist with the District's implementation of the agreement; create a non-discrimination and anti-harassment statement that complies with Title IX, Title VI, Section 504 and Title II; provide effective notice of the statement to students, parents, employees and third parties; establish grievance procedures compliant with Title IX, Title VI, Section 504 and Title II; provide effective notice of the procedures to students, parents, employees and third parties; designate compliance coordinators and provide effective notice of the coordinators to students, parents, employees and third parties; conduct annual school climate checks related to harassment incidents; create a task force to suggest strategies for dealing with harassment in schools; train staff and coordinators on obligations related to identifying, reporting, investigating, and taking appropriate action in response to harassment incidents; train students on recognizing and reporting harassment; create a system for investigating, record-keeping and tracking complaints and incidents of harassment; and create a system for monitoring the effectiveness of its response to harassment and conducting a self-assessment.

Resolution letter: go.usa.gov/3ZjVm

Resolution agreement: go.usa.gov/3ZjVA



HHS Combats Discrimination in Patient Placement: The Department of Health and Human Services' Office for Civil Rights (OCR) entered into a Voluntary Resolution Agreement with Shiawassee County Medical Care Facility in Corunna, Michigan. The Agreement resolves Title VI compliance issues identified during OCR's review of Shiawassee, a 136-bed skilled nursing facility that is Medicare and Medicaid certified. OCR initiated a review to examine a report that hospital nursing staff were assigned based on patients' racial preferences. The Resolution Agreement with OCR calls for the appointment of a Title VI Coordinator who will be charged with overseeing Shiawassee's overall compliance with Title VI and will have special responsibilities for the investigation and adjudication of any Title VI complaints filed internally with Shiawassee. In addition, Shiawassee will train its workforce on relevant aspects of Title VI. The Agreement will remain in effect for two years and requires Shiawassee to submit reports to OCR regarding compliance.

Bulletin: [go.usa.gov/3knBR](https://www.go.usa.gov/3knBR)

Resolution Agreement:
[go.usa.gov/3knK3](https://www.go.usa.gov/3knK3)

Hawai'i Courts Improve Language Access: On March 24, the Department of Justice announced the successful completion of its review of the Hawai'i Judiciary's Language Access Program, which included providing the state court's system with substantial technical assistance. As a result of DOJ's efforts, the court system agreed to issue a clear policy stating that all limited English proficient individuals would be provided competent court interpretation free of charge; implement an awareness campaign to increase the public's knowledge on how to access the court's language services; create a language assistance complaint system; revise its court interpreter assignment system, train interpreters and provide mandatory training for judicial staff on the interpreter assignment process; and implement oversight measures to ensure that the language access program complies with Title VI. The Judiciary is committed to continuing this work and will seek ongoing assistance from the Department.

Closure letter: [go.usa.gov/3ZjpB](https://www.go.usa.gov/3ZjpB)

Press Release: [go.usa.gov/3ZjpQ](https://www.go.usa.gov/3ZjpQ)

Summary Judgment Denied in *FACE v. Hawai'i Dep't of Transportation (HDOT)*: In this matter, plaintiffs allege that HDOT intentionally discriminates based on national origin, violating Title VI and the Equal Protection Clause, because of HDOT's failure to provide language services for the Hawai'i driver's license exam. The DOJ Civil Rights Division filed a Statement of Interest arguing, (1) that HDOT as a recipient of federal financial assistance, was on notice of its obligation to provide language services; (2) that such services must be provided on a timely basis; (3) that a failure to provide timely language access services can constitute evidence of intentional discrimination in violation of Title VI and that HDOT's proffered facts are appropriately viewed as evidence of intent; and (4) that a Federal Transit Administration 2010 compliance review used by HDOT as evidence of compliance with Title VI did not address driver's license administration. On February 23, the U.S. District Court for the District of Hawai'i issued an order denying the parties' cross-motions for summary judgment and adopting the legal standard supported by the United States regarding intentional discrimination in Title VI cases.



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AGENCY TITLE VI AGREEMENTS, SETTLEMENTS AND FINDINGS

TITLE VI DEVELOPMENTS AND ACTIVITY



ED and DOJ Release Guidance Concerning Schools' Obligations to Ensure English Learner Students Have Equal Access to High-Quality Education: The U.S. Departments of Education and Justice released joint guidance on January 7, 2015, reminding states, school districts, and schools of their obligations under federal law to ensure that English learner (EL) students have equal access to a high-quality education and the opportunity to achieve their full academic potential. The guidance (also available in Spanish, Simplified and Traditional Chinese, Vietnamese, and Tagalog), two fact sheets (also available in Spanish, Simplified and Traditional Chinese, Cambodian, Hmong, Korean, Laotian, Russian, Vietnamese, and Tagalog), and other resources are available on OCR's [EL Students and LEP Parents](#) homepage and at go.usa.gov/3Zjpw. The Department of Education also released a new feature within the Civil Rights Data Collection (CRDC) that allows users to pull detailed information on EL students by school and school district from any 2011-12 CRDC

report. The CRDC is available at <http://ocrdata.ed.gov/>.



Language Access Training Videos Launched: On April 23, the Federally Conducted Committee of the Interagency Working Group on Limited English Proficiency (LEP) launched a language access video training series for federal employees. The Department of Justice organized the launch event on behalf of the IWG. The Principal Deputy Assistant Attorney General of the Civil Rights Division and the Chief of Staff of the Social Security Administration keynoted the event and the Executive Director of the White House Initiative on Asian Americans and Pacific Islanders provided comments. Speakers from the Federal Bureau of Investigation, Community Relations Service, and the Department of Homeland Security's Office of Civil Rights and Civil Liberties provided guidance on using the materials. Among the attendees are the Chief Learning Officers of several agencies. The videos, which will be posted on LEP.gov, provide a variety of useful tips and tools for working with LEP individuals. Recipients of federal financial assistance should consider incorporating the information found in these videos to enhance their efforts, as required by Title VI, to

ensure meaningful access by limited English proficient populations.

DOJ Leads Panel at 2015 National Environmental Justice Conference and Training Program: On March 12, the Department of Justice led a roundtable discussion at the National Environmental Justice Conference and Training Program focused on stakeholder engagement with federal civil rights offices to improve enforcement of Title VI in environmental justice matters. Panelists included representatives from the Department of Transportation, the Environmental Protection Agency, Earthjustice, and other advocacy organizations.

DOJ Launches Federal Webinar Training on Title VI Enforcement and Compliance: On February 24, the Department of Justice, Civil Rights Division, presented a Title VI Foundational Webinar Training for over 200 federal civil rights employees from 15 different agencies across the federal government. Attendees included staff in Washington and regional offices around the country. This training was part of the government-wide coordination initiative announced by the Acting Assistant Attorney General in her July 24, 2014 memorandum to Title VI federal civil rights staff, acknowledging the 50th anniversary of Title VI. This foundational training will be followed by more advanced trainings on complex issues in Title VI jurisprudence and enforcement.



FREQUENTLY ASKED QUESTIONS

DOJ Provides Technical Assistance to Hawai'i Police: In March, 2015, staff from the Department of Justice Civil Rights Division travelled to Hawai'i to train local police and public safety officers from several islands on Title VI and language access. Participants in the training learned about working with limited English proficient individuals, using telephone interpretation services, and translating vital documents. The technical assistance provided by DOJ is available to other federal funding recipients on request.



DOJ and HHS to Issue Guidance on Title VI in Child Welfare: The Department of Health and Human Services and the Department of Justice will prioritize guidance on the application of civil rights laws in the child welfare system over the coming year.

FREQUENTLY ASKED QUESTIONS

Are federal agencies authorized to collect data to determine civil rights compliance under Title VI?

Yes. The Title VI regulations of all federal funding agencies and the

Title VI Coordination Regulations unambiguously authorize agencies to collect necessary information to determine compliance with Title VI. Agencies' authority and purpose for collecting information and data from applicants for and recipients of federal financial assistance is rooted in the agencies' investigative and enforcement responsibilities under Title VI. Importantly, agencies are not limited to collecting relevant demographic data only in response to a complaint, but may do so related to compliance reviews or other federal agency efforts to monitor recipients' compliance with Title VI. Courts have recognized that routine monitoring through data collection is a form of enforcement and that agencies have broad discretion in selecting the data they need to fulfill the congressional mandate to enforce Title VI through monitoring.

What is the role of data collection in Title VI enforcement?

Civil rights data collection is the cornerstone of effective Title VI enforcement. The importance of diligently gathered and thoroughly analyzed data cannot be overstated. It is indispensable to the investigatory process in assessing allegations of discrimination and can form the basis for initiating compliance reviews focusing on particular issues or systemic problems that require technical assistance, policy guidance, litigation, or other enforcement mechanisms to remedy discrimination. It is also an effective

mechanism to support agency oversight and ensure that discrimination does not recur. Although collecting civil rights data is a vital part of Title VI enforcement, merely gathering information is insufficient. To effectively address Title VI issues, agencies must analyze the data they collect, determine whether the recipient is in compliance or in need of technical assistance, and take such actions as needed to promptly and equitably address problems and ensure compliance.

What types of information are recipients of federal financial assistance required to submit to comply with the requirements of Title VI?

Recipients must cooperate with requests from federal agencies for information to demonstrate compliance. This may include demographic information related to the beneficiaries of the federally funded program and information demonstrating nondiscrimination in the decision-making process and implementation of the program, among others. Federal agencies are expected to provide guidance and assistance to their recipients on this obligation. All agencies' Title VI regulations require recipients to keep such records and to provide the federal agencies with timely, complete, and accurate compliance reports. (*See, e.g.,* 28 C.F.R. § 42.106(a)-(b) (Department of Justice Title VI regulations)) Recipients must provide this information at such times and in

THE FEDERAL COORDINATION AND COMPLIANCE SECTION
*Ensuring Consistent and Effective Title VI Enforcement
Across the Federal Government*

such form and containing such information as the agencies may determine is necessary to determine whether recipients are complying with Title VI. Racial and ethnic data showing the extent to which members of minority groups are beneficiaries of recipients' federally assisted programs are fundamental and must be made available to the federal agencies. Where the primary recipient extends federal financial assistance to subrecipients or subgrantees, these entities are required to submit data and information necessary for the primary recipient to comply with its compliance reporting obligations under Title VI. *See, e.g., 28 C.F.R. § 42.106(b).* Resources such as Census data and the data collection requirements of federal agencies' program statutes may be useful to recipients in

fulfilling these civil rights obligations.

Is submitting Title VI information or data directly to the federal agencies the only requirement?

No. When recipients receive federal financial assistance, not only are they bound to maintain the data necessary to evaluate Title VI compliance, they must also provide federal agencies with access to the data. Access includes viewing relevant documents, inspecting facilities, and interviewing recipient personnel during normal business hours. If recipients are not in possession of the required information and cannot obtain it, they must so certify to the federal agencies in a report detailing the efforts made to obtain the information from an agency,

institution, or person who fails or refuses to furnish the information. *See, e.g., 28 C.F.R. § 42.106(d).*

What Title VI information and data are recipients required to make available to the public?

Under the Title VI regulations, recipients are required to inform the public, beneficiaries, participants and other interested persons of the applicability of Title VI to their federally funded programs and activities. Also, federal agencies may find that effective Title VI enforcement requires recipients to make information or data on Title VI compliance available to the public. In these circumstances, recipients are required to make such information available as the federal agency deems necessary. *See, e.g., 28 C.F.R. § 42.106(d).*



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